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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/606,250	06/24/2003	Robert J. Garabedian	24728-7003 (2024728-70148)	4498
7590	11/03/2005		EXAMINER	
Bingham McCutchen LLP Suite 1800 Three Embarcadero Center San Francisco, CA 94111-4067			PEFFLEY, MICHAEL F	
			ART UNIT	PAPER NUMBER
			3739	

DATE MAILED: 11/03/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/606,250	GARABEDIAN ET AL.
	Examiner	Art Unit
	Michael Peffley	3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 22 August 2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 23-29,33-44,48,49 and 70-81 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 23-29,33-44,48,49 and 70-81 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date: _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date: _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

Applicant's amendments and comments, received August 22, 2005, have been fully considered by the examiner. The following is a complete response to the August 22, 2005 communication.

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 23-27, 29, 33-39, 44, 48, 49 and 70-81 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosman et al (6,530,922).

The Cosman et al device includes an alignment device (14) fixed to an external tissue surface. The alignment device includes a plurality of apertures (14a) through which ablation probes are provided to create lesions in tissue. The device is used to create an enlarged, complete, compound lesion in tumor tissue located beneath the skin, and the probes may be provided to tissue in parallel or non-parallel configurations (see Figures 9a-9c). Cosman et al also disclose the use of various sets of probes (Figures 5-6) and the use of a cannula to provide the probes to tissue (Figure 7). Cosman et al fail to teach providing a first probe in a first aperture to create a first lesion, then removing the probe and placing it in a different aperture to create a second lesion as recited in applicant's claim 23. Cosman et al further fail to disclose the sequential operation of the probes as recited in applicant's claim 35. Rather, Cosman et al provide the probes into tissue and provide RF energy to the probes simultaneously to provide more efficacious creation of lesions in tissue. However, Cosman et al specifically teach that it is (was) known to provide for the creation of individual lesions

and to provide sequential heating with various probes. In particular, column 4, lines 12-46 discuss the benefits of providing energy to the electrode cluster as opposed to providing energy to single probes or providing energy sequentially or serially to a plurality of probes. As such, Cosman et al is deemed to specifically teach that it is well-known in the art to use single probes activated sequentially or serially to create multiple, compound lesions for the treatment of tissue. Cosman et al specifically provide for an improvement in those procedures.

As such, it is deemed to be an obvious consideration for one of ordinary skill in the art to have created multiple lesions in tumor tissue with a single probe or a plurality of probes that are activated either serially or sequentially, particularly since Cosman et al teach that such a procedure is known in the art.

Claims 28 and 40-43 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cosman et al ('922) as applied to the claims above, and further in view of Morris et al (2002/0120261).

The Cosman et al device has been addressed previously. Cosman et al provide a skin-surface alignment device, but fail to provide the particular bosses or recesses on the device to control the deployment distance of the ablation probe.

Morris et al disclose an analogous ablation probe device that provides an alignment device including a plurality of apertures through which ablation probes are inserted to treat tumor tissue. In particular, Morris et al disclose various embodiments to control the deployment of the ablation probes. Figures 22, 39, 40 and 50B show

various bosses and recesses used to control the distance the ablation probes are deployed from the alignment device.

To have provided the Cosman et al device with a boss or recess associated with the apertures to control the deployment distance of the ablation probes is deemed an obvious consideration for one of ordinary skill in the art since Morris et al teach that it is known to use such a means to control the deployment of ablation probes through an alignment device.

Response to Arguments

Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

It is noted that the Cosman et al reference was initially used to reject the originally filed application claims. Applicant then made amendments to the claims to specifically recite creating multiple lesions in tissue with a single probe deployed through different lesions. This was deemed to overcome the Cosman et al reference as an anticipatory reference since Cosman et al clearly was aimed at creating lesions using multiple probes simultaneously. The previously cited Edwards et al reference was then relied upon to show the method steps as recited in the claims presented in the amendment of February 14, 2005. The examiner agrees that the Cosman et al reference does not anticipate the claims as currently provided. However, Cosman et al do clearly teach that it was known to provide for sequential and/or serially ablation of tumors using either a single or multiple probes such that a compound ablation pattern is created. Cosman et al disclose an alternative, and better, method of creating such a

compound lesion, but is deemed to be a teaching that it would be obvious to perform the procedure in alternative, albeit less effective, methods.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Peffley whose telephone number is (571) 272-4770. The examiner can normally be reached on Mon-Fri from 6am-3pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Michael Peffley
Michael Peffley
Primary Examiner
Art Unit 3739

mp
October 31, 2005